

**THIS PROPOSAL IS SUBMITTED IN AN ATTEMPT TO REACH A SETTLEMENT. IT IS A PACKAGE PROPOSAL OF A MEMORANDUM OF UNDERSTANDING. IN THE EVENT THE PROPOSAL, OR ANY PART OF THE PROPOSAL, IS NOT ACCEPTED, THE ASSOCIATION RESERVES THE RIGHT TO MODIFY, AMEND AND/OR ADD PROPOSALS.**

**Agreement Between the City of San José and  
the Association of Legal Professionals**

This Memorandum of Understanding ("Agreement") is entered into at San Jose, California, on this       day of       , 2012, between the City of San Jose ("City") and the Association of Legal Professionals ("Association").

**ARTICLE 1       PURPOSE**

The parties agree that the purposes of this Agreement are:

- To promote and provide harmonious relations, cooperation and understanding between the City and the employees covered herein,
- To provide an orderly and equitable means of resolving differences which may arise under this Agreement, and
- To set forth the full agreements of the parties reached as a result of meeting and conferring in good faith regarding matters within the scope of representation for employees represented by the Association.

[COMMENT: This provision is substantively identical to Article 1 of the current MOU between the City and the Association of Engineers and Architects.]

**ARTICLE 2       TERM**

**2.1 Term:** July 1, 2012 — June 30, 2013. Except where a specific provision of this Agreement expressly provides otherwise, the Agreement shall become effective on November 1, 2012 ("Effective Date"), and shall remain in effect through November 1, 2014.

**2.2 First Meeting:** This Agreement expires on November 1, 2012. It is mutually agreed that the first meeting of the parties will be held no later than fifteen (15) calendar days after the City or Association receives notice from the other, which may be any date after January 1 of the year in which the current Agreement terminates.

[COMMENT: This provision is the same as Article 2 of the current MOU between the City and the Association of Engineers and Architects except as follows: (1) "Except where a

specific provision of this Agreement expressly provides otherwise” was added to the front of the sentence of the first paragraph and “except where otherwise provided” was deleted after the effective date in the first sentence. The second sentence of the first paragraph referring to amendments was moved to section 3.2.]

### **ARTICLE 3      AGREEMENT CONDITIONS**

**3.1 Complete Agreement:** This Agreement sets forth the full and entire understanding of the parties regarding the matters set forth herein, and any and all prior or existing Agreements, understandings and agreements, whether formal or informal, are hereby superseded and terminated in their entirety.

[COMMENT: This provision is the same as Section 3.1.1 of the current MOU between the City and the Association of Engineers and Architects.]

**3.2 Amendments:** No amendment or change to the provisions of this Agreement shall be valid or binding unless reduced to writing and signed by duly authorized representatives of the parties.

[COMMENT: This provision is the same as the second sentence in the first paragraph of Article 2 of the current MOU between the City and the Association of Engineers and Architects.]

**3.3 Obligation to Meet & Confer:** Although nothing in this Agreement shall preclude the parties from mutually agreeing to meet and confer on any subject within the scope of representation during the term of this Agreement, it is understood and agreed that neither party may require the other party to meet and confer on any subject matter covered herein or with respect to any other matter within the scope of representation during the term of this Agreement.

[COMMENT: This provision is the same as Section 3.1.4 of the current MOU between the City and the Association of Engineers and Architects.]

**3.4 Severability:** Notwithstanding any other provision of this Agreement to the contrary, should any decision by a court of competent jurisdiction or any applicable State or Federal law or regulation invalidate a provision of this Agreement, diminish the benefits of a provision of this Agreement, or impose additional obligations on either party, the parties shall meet and confer on the affected provision upon written notice by either party. In such event, all other provisions of this Agreement not affected shall continue in full force and effect.

[COMMENT: This provision is substantively the same as Section 3.2 of the current MOU between the City and the Association of Engineers and Architects.]

**3.5 Nondiscrimination:** The parties agree that they, and each of them, shall not discriminate against any employee because of membership or lack of membership in the Association, or because of any authorized activity on behalf of the Association.

[COMMENT: This provision is the same as the first sentence of Section 3.4.2 of the current MOU between the City and the Association of Engineers and Architects.]

## **ARTICLE 6 RECOGNITION**

**6.1 Recognition of Association:** Pursuant to Resolution No. 39367 of the City Council of the City of San Jose and the provisions of applicable state law, the Association is recognized as the exclusive representative for the purpose of meeting and conferring on matters within the scope of representation for employees assigned to the classifications listed in Exhibit A, attached and incorporated by reference into this Agreement. ("Classifications.")

**6.2 Appropriate Unit:** The Classifications, and any subsequent additions thereto or deletions therefrom, constitute an appropriate unit. There shall be no changes in the Classifications constituting the appropriate unit without written agreement of the parties.

[COMMENT: This Article is substantively the same as Article 4 of the current MOU between the City and the Association of Engineers and Architects except as follows: the last sentence of Section 6.2 is added.]

**6.3 Reference to Employee:** Each reference in this Agreement to "employee" shall be deemed a reference to a City employee represented by the Association.

**6.4 Side Letter:** On **[DATE]** the City and Association entered into a side letter agreement regarding changing an Association member's designation to that of an unrepresented employee in the Executive Management and Professional Employees unit (Unit 99). A copy of that side letter is attached to this Agreement as Exhibit B and incorporated by reference herein as if set forth in full.

## **ARTICLE 7 MANAGEMENT RIGHTS**

**7.1 Authority:** Except to the extent that the rights are specifically limited by the provisions of this Agreement, the City retains all rights, powers and authority granted to it pursuant to any law or the City Charter.

[COMMENT: This provision is the same as the first part of the first sentence of Section 5.1 of the current MOU between the City and the Association of Engineers and Architects. Everything after "City Charter," starting with "including, but not limited to" has been deleted.]

**7.2 City's Authorized Representative:** The City Attorney, or his/her duly authorized representative, is the City's principal authorized agent.

[COMMENT: The Association members are hired, supervised and work under the control and direction of the City Attorney, who is appointed directly by the City Council. For this reason, the Association believes that the most appropriate representative for purposes of

leading discussion and negotiations over the terms and conditions of employment is the City Attorney, not the City Manager.]

## **ARTICLE 8      ASSOCIATION RIGHTS**

**8.1 Principle Authorized Agent:** The Association's elected President, or his/her duly authorized representative, is the Association's principal authorized agent.

**8.2 Authorized Representatives:** The City shall recognize up to twelve (12) Association representatives who are properly designated by the Association. The Association agrees to properly notify the City's Authorized Representative of any changes of employees designated as representatives.

[COMMENT: This provision is the substantively the same as Sections 6.2.1 and 6.2.6 of the current MOU between the City and the Association of Engineers and Architects.]

**8.3 Release Time - Training:** The parties agree that they have a mutual interest in well-trained representatives. Toward this end, up to four (4) designated representatives shall be granted a maximum of eight (8) hours paid release time during each year of this Agreement to participate in training sessions related to the provisions of this Agreement, to the collective bargaining process, or to the employees rights and responsibilities as a representative.

[COMMENT: This provision is the same as the first four sentences of Section 6.2.7 of the current MOU between the City and the Association of Engineers and Architects. The following language was deleted from Section 6.2.7:

"jointly conducted by the Union and the Office of Employee Relations, according to an outline of such training activities to be submitted by the Union and approved by the Office of Employee Relations prior to conducting any such training sessions."

It was replaced by the following language: "to the collective bargaining process, or to the employees rights and responsibilities as a representative."

**8.4 Release Time – Collective Bargaining/Meet & Confer:** Release time from regular City duties shall be provided to up to four (4) designated Association representatives for the purpose of reasonably preparing for and engaging in the collective bargaining process with the City and for meeting with the City on issues that are the subject to "meet and confer."

**8.5 Release Time – Other:** The City grants up to two (2) designated Association representatives sufficient release time from regular City duties as reasonably needed to do the following:

- To attend City Council meetings regarding matters when matters affecting the Association are considered;

- To attend Federated Retirement Board meetings;
- To attend Benefit Review Forum meetings; and
- To attend meetings scheduled by Administration when attendance is requested.

[COMMENT: Provision 8.5 is based on Sections 6.3.2 of the current MOU between the City and the Association of Engineers and Architects.]

**8.6 Agency Shop:** The Association is an Agency Shop in accordance with an agreement executed by the Association and City on July 19, 2012, entitled "Agency Shop Agreement, City of San Jose and Association of Legal professional of San Jose." A copy of the Agency Shop Agreement is attached to this Agreement as Exhibit C and is incorporated herein by reference as if set forth in full.

## **ARTICLE 9 SALARY**

**9.1 Salary Ranges:** In fiscal years 2010 and 2011 Effective June 27, 2010, all salary ranges for employees holding positions in classifications assigned to the Association were decreased by a total of approximately 10.14 percent. The current salary ranges are set forth in Exhibit D of this Agreement, and are the minimum ranges during the term of this Agreement. ALP shall be decreased by approximately 4.75%. This will result in the top and bottom of the range of all classifications represented by ALP being 4.75% lower. All employees will receive a 4.75% base pay reduction.

**9.2 Salary:** In fiscal years 2010 and 2011, all employees holding positions in classifications assigned to the Association received a reduction in base pay totaling 10.14 percent. During the term of this Agreement, the compensation of each Association member as of July 1, 2012 shall continue as the *minimum* level of compensation, and the City shall not implement a reduction in compensation. Nothing herein is intended to prevent the City Attorney from reducing an individual Association member's compensation based on performance or for disciplinary reasons.

Effective June 25, 2011, the one time base pay reduction of 1.90% and mandatory unpaid furlough program which were part of the agreement for Fiscal Year 2010-2011 shall cease.

Effective June 26, 2011, all salary ranges for employees holding positions in classifications assigned to ALP shall be decreased approximately by an additional 5.39%. This will result in the top and bottom of the range of all classifications represented by ALP being an additional 5.39% lower. All employees will receive an additional 5.39% base pay reduction.

## **ARTICLE 10 COST OF LIVING ADJUSTMENTS ("COLA")**

**10.1 Adjustment:** On the effective date of this Agreement and on the first day of each new fiscal year thereafter, the salary of each Association member shall be adjusted (up or down) in an amount equal to the increase or decrease in the Bureau of Labor Statistics

Consumer Price Index for the San Francisco-Oakland-San Jose area for the immediately preceding fiscal year.

**10.2 Other Bargaining Units:** Notwithstanding anything to the contrary in Subsection 10.1, if during the term of this Agreement the City agrees to give any other City bargaining unit a COLA higher than any adjustment required under Subsection 10.1, then the Association members shall be entitled to the higher COLA.

## **ARTICLE 11 BILINGUAL PAY**

An employee who is required to use a non-English language on a regular basis may be eligible to receive a bi-weekly payment of \$29 for oral only bilingual or \$40 per pay period for oral/written translation. Employee must be certified as bilingual by the Human Resources Department.

## **MANAGEMENT PERFORMANCE PROGRAM (MPP)**

~~The Management Performance Program is an annual employee evaluation system that provides eligible employees performance based wage increases.~~

~~Each employee who is not already at the top of the salary range may be eligible to receive a performance based increase for the rating period. The MPP also provides that employees may receive up to forty (40) hours of additional executive leave.~~

~~Please refer to City Policy Manual (CPM) Section 3.3.2 for additional information.~~

[COMMENT: The Management Performance Program is drafted to apply to persons serving under the City Manager. It even states that certain provisions do not apply to the Office of the City Attorney. Our proposed Article 12 is a performance program that is specifically drafted to deal with the unique requirements of our Office.]

## **ARTICLE 12 PERFORMANCE BASED PROGRAM**

**12.1 General:** The classifications represented by the Association are in open ranges and do not have steps. Merit-based salary increases and promotions for Association members will occur in accordance with the requirements of this Article 12.

**12.2. Merit Allocation:** At the beginning of each fiscal year following the Effective Date, the following *minimum* allocation shall be reserved by the Office of the City Attorney for administration in accordance with the terms and conditions of this Article: 5% x Total Salary of Association Members. ("Merit Allocation.")

**12.2.1 Right to Negotiation New Minimum:** Notwithstanding anything to the contrary in this Agreement, following the first full fiscal year in which this Agreement is in effect, either party may give written notice to the other party to renegotiate the amount of the Merit Allocation for the next, upcoming fiscal year. The written notice must be given at least 45 calendar days

before the start of the new, upcoming fiscal year. If written notice is not given at least 45 calendar days before the start of the new, upcoming fiscal year, then the existing Merit Allocation shall automatically continue for the next, upcoming fiscal year.

**12.2.2 Negotiations:** Within a reasonable time following the written notice given in accordance with Subsection 12.2.1, the parties shall begin negotiations to determine a new Merit Allocation to be reserved for the upcoming fiscal year. The parties negotiate in good faith.

**12.3 Use of Merit Allocation:** The City Attorney must use the Merit Allocation only to provide performance-based pay incentives and to establish parity of salaries. The City Attorney has the discretion to determine how much of the Merit Allocation to allocate between these 2 purposes.

**12.4 Form of Performance Based Incentives:** The City Attorney has the discretion of providing performance-based incentives in the form of permanent salary adjustments or one-time, lump-sum bonuses.

**12.4.1 Limit on Use of Bonuses:** Notwithstanding the foregoing, the City Attorney can not give an individual Association member two consecutive performance-based incentives in the form of a bonus but may alternate between a bonus and permanent salary adjustments.

**12.4.2 Amount of Incentive:** Except as otherwise provided in this Article, the City Attorney has the discretion to determine the amount of any performance-based incentive.

**12.5 Annual Evaluation:** During the fall (September - December) of each year, the City Attorney will conduct a written evaluation of each Association member to determine whether the member should receive a performance-based incentive and/or a promotion. ("Annual Evaluation") The City Attorney will conduct the Annual Evaluation consistent with the following:

**12.5.1 Performance Based Measures:** Before the first Annual Evaluation following the effective date of this Agreement, the City Attorney will develop specific, performance based measures for each classification, and evaluation forms that evaluate Association members based on such performance measures.

**12.5.2 Years of Experience:** The specific, performance based measures for each classification must include the general number of years of experience associated with such classification.

**12.5.3. Evaluation Forms:** The City Attorney will develop different evaluation forms for the following attorney groups: transaction attorneys and litigation attorneys (which includes workers compensation attorneys). The City Attorney will also develop evaluation forms for the following Association

members: legal services manager and senior legal analyst. Each of the evaluation forms will be tailored to evaluate the performance measures as such measures apply to the different work duties associated each group.

**12.5.4. Objective Rating System:** The evaluation form must include an objective system of rating each performance measure that is tied to determining a member's eligibility for a performance-based incentive.

By means of example only, the objective rating system for each performance measure could be numerical as follows:

- 1 = unacceptable
- 2= capable
- 3= meets Office standard
- 4= exceeds Office standard
- 5= excellent.

Association members who average a 3, 4 or 5 on all performance measures would be entitled to a performance-based incentive. Someone who averages a 4 would receive a greater performance-based incentive than someone who averages a 3. Someone who averages a 5 would receive a greater performance-based incentive than someone who averages a 3 or 4.

**12.5.5 Lack of Promotion:** If an Association member remains in the same classification for an amount of time equal to or greater than the general number of years of experience associated with such classification, then each Annual Evaluation of that member thereafter must state the following:

- The specific reason(s) that the member is not being promoted, and
- What specifically the member needs to accomplish within the following year to achieve a promotion to the next higher Classification.

At the request of the Association member, the City Attorney shall perform a follow-up evaluation approximately 6 months after the Annual Evaluation. The purpose of the follow-up evaluation will be to assess the member's progress towards promotion.

**12.5.6 Follow-up Evaluation:** If an Association member receives a "poor" or "below standard" Annual Evaluation, then the City Attorney shall perform a follow-up evaluation approximately 6 months after such Annual Evaluation. The purpose of the follow-up evaluation is to encourage performance improvement and assess the level of improvement that occurred in the intervening time period.

**12.5.7 Meet and Confer:** The City Attorney will meet and confer in good faith on an ongoing basis with the Association on the development of the

performance measures and evaluation forms described in this Subsection. The City Attorney will make a good faith effort to consider and incorporate the comments and suggestions of the Association regarding this issue.

**12.6 Special Evaluation:** In addition to the Annual Evaluation, the City Attorney may give a special evaluation at any time to communicate marginal, unsatisfactory or exceptional performance.

**12.7 Appealing Evaluation:** An Association member may appeal any evaluation as follows:

**12.7.1 Written Appeal:** The Association member must make a written appeal request to the City Attorney within 10 business days following the evaluation being appealed. The written request should include a statement of the reasons for the appeal.

**12.7.2 Hearing:** Within 10 business days of receiving the appeal request, the City Attorney shall meet to discuss the appeal with the Association member and the Association member's supervisor. The parties can agree to have anyone else participate in the meeting.

**12.7.3 Written Decision:** Within 30 calendar days of the meeting required by Subsection 12.7.2, the City Attorney shall make a final written decision on the appeal and provide the Association member with such written decision.

**12.8 Salary Parity:** The City Attorney will establish salary parity through the use of permanent salary adjustments. The City Attorney shall administer the Merit Allocation for salary parity consistent with the following:

**12.8.1 Within Office:** The City Attorney must give the highest priority to establishing parity of salaries within the Office. The City Attorney will make every reasonable effort to ensure that parity of salaries exists among employees performing similar work, and with similar years of experience and responsibilities. In addition, the City Attorney shall establish parity in the starting salaries of new hires with the salaries of existing Association members.

**12.8.2 With Other Offices:** Once parity of salaries within the Office has been established, the City Attorney, in the City Attorney's discretion, may use the Merit Allocation to establish parity of salaries of Association members with the salaries of employees of other public agencies who are performing comparable work. For purposes of this provision, "other public agencies" means the in-house legal departments for the County of Santa Clara, the City and County of San Francisco, and the Cities of Oakland, Sacramento, Los Angeles and San Diego.

**12.8.3 Meet and Confer:** Each year before reserving the Merit Allocation, the City Attorney will meet and confer with the Association to discuss in detail what

efforts the City Attorney is making to establish and/or maintain salary parity in accordance with this provision. The City Attorney shall make a good faith effort to timely and fully respond to questions regarding "parity," and to consider and incorporate the comments and suggestions of the Association regarding this issue.

**12.9 Retroactive Pay:** The City Attorney, in the City Attorney's discretion, may make any salary increase given pursuant this Article retroactive for up to 3 months before the date the salary increase is given. This provision applies in lieu of Council Policy Manual Section 4.1.2.

## **ARTICLE 13 PROFESSIONAL DEVELOPMENT PROGRAM (PDP)**

**13.1 Reimbursement:** The City will reimburse each employee represented by the Association up to \$1,000 per fiscal year pursuant to the terms and conditions of the "Professional Development Program – Association of Legal Professionals of San Jose (ALP)" set forth in Section 4.3.6 of the City Policy Manual, as revised February 17, 2012. Each eligible employee may be reimbursed for up to \$1000 per fiscal year (July 1 – June 30) for the purchase of textbooks required for an approved course, college accredited courses, non-college accredited courses, continuing education units, adult education classes, workshops, seminars, travel expenses, memberships in professional associations, professional licenses and professional certificates which are either related to and is beneficial for the work of the employee's current City position or occupation, must satisfy a continuing education requirement of the employee's current City position or occupation or must prepare the employee for advancement/promotion to positions of greater responsibility in the City that is within the employee's current trade or business.

[COMMENT: This subsection is similar to Subsection 11.6 of the current MOU between the City and the Association of Engineers and Architects.]

A total of \$300 (of the \$1,000 annual maximum) may be reimbursed for professional materials that include professional books and professional magazine subscriptions, professional books to prepare for certifications or licensing, and other learning materials (learning/training software, videos, etc.) for educational purposes provided that the materials relate to and are beneficial for the work of the employee's current City position or occupation or are required of the employee's current City position or occupation.

Please refer to the CPM Section 4.3.6 for additional information and requirements.

**13.2 Temporary Employees:** Notwithstanding Subsection 13.1, temporary employees are not eligible for this benefit.

## **ARTICLE 14 PROFESSIONAL MEMBERSHIPS**

**14.1 Attorneys:** The City shall pay the membership fee for the California Bar Association and for the Santa Clara County Bar Association for each Association member who is an "active" attorney.

[COMMENT: This reflects the practice that has existed for at least the past decade.]

**14.2 Other Association Members:** For each Association member other than one covered by Subsection 14.1, the ~~Each~~ employee is eligible for reimbursement for membership fees or dues paid for the maintenance of a license required to perform employee's job and for dues paid for membership in one (1) additional job-related professional association.

**14.3 Temporary Employees:** Notwithstanding Subsections 14.1 and 14.3, ~~t~~Temporary employees are not eligible for this benefit.

## **ARTICLE 15 RETIREMENT**

**15.1 General:** Full-time eligible employees are members of the Federated City Employees' Retirement System. For more information regarding retirement benefits, please refer to the Federated City Employees' Retirement System Handbook, which summarizes the information from the San Jose Municipal Code.

**15.2 Employees Hired On or Before [DATE]~~September 29, 2012~~:** Full-time employees hired by the City on or before [DATE] ("Current Employees") are members of the Federated City Employees' Retirement System. Current Employees are entitled to the retirement benefits of the Federated City Employees' Retirement System applicable to such employees as set forth in Title 3 of the San Jose Municipal Code, Article XV of the City Charter and the Federated City Employees' Retirement System Handbook – all as in affect before the approval of Measure B by the voters in June, 2012. ~~The Federated Retirement System provides eligible employees with a monthly allowance as well as medical and dental benefits dependent upon years of service.~~

**15.2.1 Summary of Benefits:** The following is a summary of the retirement benefits to which Current Employees are entitled:

- To be eligible to receive a monthly allowance, the employee must have a minimum of five (5) years of service in the Federated City Employees' Retirement System and/or a reciprocal retirement system, and be at least fifty-five (55) years of age.
- The Federated City Employees' Retirement System provides eligible employees with medical benefits after fifteen (15) years of service and dental benefits after five (5) years of service; however, employees should refer to the Federated Handbook for specific rules and benefits.

♣• The monthly retirement allowance is based on the following formula:  
Years of Service X 2.5% X Final Compensation = Monthly Retirement Allowance.

♣• The maximum retirement benefit a retiree may receive is 75% of their final compensation.

♣• Note: Final Compensation is the highest average monthly salary during 12 consecutive months.

**15.2.2 Measure B:** The City formulated Measure B in attempt to modify the retirement benefits of Current Employees and new employees. The City Council voted to place Measure B on the June, 2012 ballot and the voters passed it. A number of lawsuits have, and may, be filed challenging the validity of all or part of Measure B. By its terms, Measure B will become effective on July 1, 2013 absent a court decision invalidating the measure or delaying its implementation.

**15.2.2.1 No Waiver of Rights:** Nothing in this Article 15 is intended to limit the right of the Association, or any member of the Association, to challenge the validity of any part of Measure B, or any actions taken by the City to implement Measure B, through an administrative or court action.

**15.2.2.2 Status Quo:** The retirement benefits of Current Employees under the Federated City Employees' Retirement System shall remain unchanged pending a final court or administrative decision that:

- Determines the validity of Measure B or the validity of the manner in which the City will implement Measure B, and
- Applies to the Association.

Following any such decision, the parties shall meet and confer on how to proceed.

**15.3 Employees Hired On or After [DATE]September 30, 2012:** Full-time employees hired by the City on or after [DATE] ("New Employees") are members of the Federated City Employees' Retirement System. New Employees are entitled to the retirement benefits of the Federated City Employees' Retirement System applicable to such employees as set forth in Title 3 of the San Jose Municipal Code, Article XV of the City Charter and the Federated City Employees' Retirement System Handbook.

**15.3.1 Summary of Benefits:** The following is a summary of the retirement benefits to which Current Employees are entitled: The Federated Retirement System provides eligible employees with a monthly allowance as well as medical and dental benefits dependent upon years of service.

- To be eligible to receive a monthly allowance, the employee must have a minimum of five (5) years of service in the Federated City Employees' Retirement System and/or a reciprocal retirement system, and be at least sixty-five (65) years of age.
- The Federated Retirement System provides eligible employees with medical benefits after fifteen (15) years of service and dental benefits after five (5) years of service; however, employees should refer to the Federated Handbook for specific rules and benefits.
- The monthly retirement allowance is based on the following formula:  
Years of Service X 2.0% X Final Compensation = Monthly Retirement Allowance.
- The maximum retirement benefit a retiree may receive is 65% of their final compensation.
- Note: Final Compensation is the highest average monthly salary during 36 consecutive months.

**15.4 Reservation:** Nothing herein shall be construed as an agreement by the parties to any increase in allocation of unfunded liability or contribution rates to Association members.

~~For Fiscal Year 2012-2013 the Federated City Employees' Retirement System contribution rates, including pension and healthcare, are 52.36% by the City and 13.00% by employees, totaling 65.36%. These rates reflect the Retirement Board adopted rates based on the June 30, 2011, valuations and do not reflect any adjustments for prefunding or adjustments to reflect the actual payroll to meet the required dollar amount.~~

[COMMENT: Inclusion of the specific rates is not appropriate and is unnecessary. The Federated System sets forth the manner of calculating rates and there is no need to specify them in an MOU. ]

~~In addition, Measure B, approved by the voters on June 5, 2012, will make changes to retirement benefits when put into effect.~~

~~This section is just a summary. The entire provisions can be found in the City's Municipal Code and/or City Charter.~~

**15.5 Part-time Employees:** Part-time and temporary employees are not eligible for membership in the City's retirement system, but participate in the "PTC" plan in lieu of Social Security wherein the City and the employee each contribute 3.75% of gross income to a defined contribution retirement account.

## **ARTICLE 16 RETIREE HEALTHCARE**

Employees may be eligible to receive retiree healthcare benefits, in accordance with the San Jose Municipal Code.

~~Effective June 28, 2009, the City and ALP began transitioning from the current partial pre-funding of retiree healthcare benefits to full pre-funding of the Annual Required Contribution (ARC) over a period of five years. The Federated Plan's initial unfunded retiree healthcare liability shall be fully amortized over a thirty year period so that it shall be paid by June 30, 2039 (closed amortization).~~

~~The cash contribution rate for plan members shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year and the City cash contribution rate shall not have an incremental increase of more than 0.75% of pensionable pay in each fiscal year. Notwithstanding the limitations on the incremental increases, by the end of the five year phase in, the City and plan members shall be contributing the full Annual Required Contribution in the ratio currently provided under Section 3.28.380 (C) (1) and (3) of the San Jose Municipal Code.~~

The City and ALP Association will continue negotiations on Retiree Healthcare during the term of this agreement.

[COMMENT: The Association has never agreed to the deleted language in the past and does not intend to do so in this Agreement. Moreover, the City acknowledges it has entered into coalition bargaining on this issue with the other City bargaining units, the Association requested to be part of that coalition bargaining, and the City refused the request on the ground that the Association is the only bargaining unit currently negotiating a new agreement. The Association believes that it should be allowed to participate in the coalition bargaining and again requests to be allowed to do so.]

## **ARTICLE 17 DEFERRED COMPENSATION PLAN**

**17.1 Full-Time Employees:** Association members who are full-time employees are eligible to participate in the City's Deferred Compensation Plan that is set forth in Chapter 3.48 of Title 3 of the San Jose Municipal Code.

**17.2 Part-Time Employees:** Association members who are part-time employees are eligible to participate in the City's PTC Plan that is set forth in Chapter 3.50 of Title 3 of the San Jose Municipal Code. ~~To supplement retirement income, employees may put aside a percentage of gross taxable income up to a maximum set by Section 457 of the IRS code and have that money placed in investments on a tax-deferred basis.~~

~~Please contact Human Resources, Deferred Compensation Division for the current maximum amount that may be deferred.~~

~~Assets under this plan are available only upon retirement, separation from City service, or death. Additional contribution options are available to employees age fifty (50) and older and those within three (3) years of retirement.~~

## ARTICLE 18 HEALTH INSURANCE<sup>1</sup>

**18.1 General Obligation:** The City will provide health coverage for eligible full-time employees and their dependents in accordance with one of the available plans.

**18.2 Minimum Available Plans:** The City will continue to make available at least one of each type of the health coverage plans set forth below in this Subsection 18.2 at substantially the same coverage, benefits and options as the health coverage plans available on the effective date of this Agreement. Nothing in this Subsection 18.2 limits the City from offering other, additional health coverage plans.

[COMMENT: This was added to protect Association members from the City unilaterally changing one or more of the existing health plans to a substantially inferior plan in order to save money – similar to what City is attempting to do with the high deductible medical plan.]

**18.2.1 Non-Deductible HMO:** A non-deductible health maintenance organization ("Non-Deductible HMO"), with co-payments not exceeding the following:

- Office visit co-pay not to exceed \$25.
- Prescription co-pay not to exceed \$10 for generic and \$25 for brand name.
- Emergency room co-pay not to exceed \$100, and
- Inpatient/outpatient procedure co-pay not to exceed \$100.

**18.2.2 Non-Deductible POS:** A non-deductible point of service plan.

**18.2.3 Non-Deductible PPO:** A non-deductible preferred provider organization.

**18.3 Premium:** For full-time employees, the City shall pay eighty-five percent (85%) of the full premium cost of the lowest priced Non-Deductible HMO plan for employee or employee and dependent coverage, and the employee will pay fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan for employee or for employee and dependent coverage.<sup>2</sup> If an employee selects a plan other than the lowest priced Non-Deductible HMO plan, the employee shall pay the difference between the total cost of the selected plan and the City's contribution towards the

<sup>1</sup> Reimbursement/contribution is prorated for part-time employees based on hours scheduled:

- 30 – 39 hours = 75%
- 25 – 29 hours = 62.5%
- 20 – 24 hours = 50%
- Less than 20 hours = none

<sup>2</sup> The City's Reimbursement/contribution is prorated as follows for part-time employees based on hours scheduled:

- 30 – 39 hours = 75%
- 25 – 29 hours = 62.5%
- 20 – 24 hours = 50%
- Less than 20 hours = none

lowest priced Non-Deductible HMO plan for employee or for employee and dependent coverage.

[COMMENT: The changes to Section 18.3 result in this paragraph being identical to the City's proposed language in the deleted paragraph below starting with "Effective December 23, 2012 . . . ."]

~~If the employee selects a plan other than the lowest priced plan, the employee pays the difference between the total cost of the selected plan and the City's contribution towards the lowest priced plan.~~

[COMMENT: The above paragraph is deleted because it repeats the last sentence in Subsection 18.3.]

**18.4 No Simultaneous Coverage:** An employee may not be simultaneously covered by City-provided medical benefits as a City employee, and as a dependent of another City employee or retiree.

~~The following plan design changes shall be implemented for all HMO plans:~~

- ~~a. Office Visit Co-pay shall be increased to \$25~~
- ~~b. Prescription Co-pay shall be increased to \$10 for generic and \$25 for brand name~~
- ~~c. Emergency Room Co-pay shall be increased to \$100~~
- ~~d. Inpatient/Outpatient procedure Co-pay shall be increased to \$100~~

[COMMENT: It is not clear whether the above language proposed by the City was intended to apply to the Non-Deductible HMO. Anyway, the substance has been moved to Subsection 18.2.1, which makes clear it is applicable to the Non-Deductible HMO.]

~~Effective December 23, 2012, the City pays eighty-five percent (85%) of the cost of the lowest priced Non-Deductible HMO plan for the employee or the employee and dependent coverage and the employee pays fifteen percent (15%) of the premium for the lowest priced Non-Deductible HMO plan. If the employee selects a plan other than the lowest priced Non-Deductible HMO plan, the employee pays the difference between the total cost of the selected plan and the City's contribution toward the lowest priced Non-Deductible HMO plan.~~

~~Effective January 1, 2013, the Kaiser 1500 Deductible Plan shall be available to employees, in addition to the existing plan options.~~

[COMMENT: The above deleted paragraph is unnecessary. Nowhere else in the provision is there any mention of a specific health care plan by name. Moreover, Subdivision 18 states that the City can offer other plans.]

## **ARTICLE 19 DENTAL INSURANCE**<sup>3</sup>

<sup>3</sup> ~~Reimbursement/contribution is prorated for part-time employees based on hours scheduled:~~

- ~~• 30 – 39 hours = 75%~~
- ~~• 25 – 29 hours = 62.5%~~

**19.1 Plans Provided:** The City will provide dental insurance for eligible employees and their dependents in accordance with one of the two available plans. As of the date of this Agreement, the plans include an indemnity plan and a DHMO plan. Both of these plans are described in detail in the City of San Jose Employee Benefits Handbook and in pamphlets available in the Human Resources Department. The City will continue to make available at least two dental insurance plans with substantially the same coverage, benefits and options as the two dental insurance plans available on the effective date of this Agreement.

[COMMENT: The first sentence added is from Subsection 11.2.1 of the current MOU between the City and the Association of Engineers and Architects. The second sentence was added to protect Association members from the City unilaterally changing one or both of the existing dental plans to a substantially inferior plan in order to save money – similar to what City is attempting to do with the high deductible medical plan.]

**19.2 Premium:** For full-time employees, the City will pay 100% of the lowest priced plan for the employee or the employee and dependent coverage.<sup>4</sup> For any other plan, the City will pay 95% for the employee or the employee and dependent coverage.

**19.3 No Simultaneous Coverage:** An employee may not be simultaneously covered by City-provided dental benefits as a City employee, and as a dependent of another City employee or retiree.

## **ARTICLE 20 HEALTH AND DENTAL IN LIEU**

**20.1 Purpose:** The purpose of the payment-in-lieu of health and/or dental insurance program is to allow employees who have alternative health and/or dental insurance coverage to drop the City's insurance and receive a payment in lieu.

**20.2 Election:** An employee may choose, during open enrollment or within thirty days of a qualifying event, to drop health and/or dental coverage and receive a payment in-lieu equal to one-half of the City's contribution toward health and/or dental coverage.

**20.3 Qualifications:** To qualify for a payment in-lieu, the employee must prove acceptable alternate group coverage and work 35+ hours/week.

**20.4 Amount of In-Lieu Payment:** Employees who qualify for and participate in the payment in-lieu of health and/or dental insurance program will receive the following payments per pay period:

• 20 – 24 hours = 50%

• Less than 20 hours = none

<sup>4</sup> [Please clarify whether the following rates apply to the lowest priced plan?] The City's Reimbursement/contribution is prorated as follows for part-time employees based on hours scheduled:

• 30 – 39 hours = 75%

• 25 – 29 hours = 62.5%

• 20 – 24 hours = 50%

• Less than 20 hours = none

	Health in-lieu	Dental in-lieu
If eligible for family coverage	\$221.84	\$19.95
If NOT eligible for family coverage	\$89.09	\$19.95

A City employee who receives healthcare coverage as a dependent of another City employee or retiree shall be deemed not eligible for family coverage.

**20.5 Loss of Alternate Coverage:** If an employee loses alternate coverage, the employee may enroll in a City health and/or dental plan outside of the open enrollment period. To be eligible the employee must provide verification that alternate coverage has been lost.

**20.5.1 Health Insurance:** To enroll in a City health insurance plan following loss of alternate coverage, the employee must pay all unpaid premiums (City and employee contributions) and refund any excess in-lieu payments required to make the coverage effective on the date when alternate coverage ceased. Re-enrollment in the plan shall be in accordance with the carrier's enrollment procedures.

**20.5.2 Dental Insurance:** Enrollment in a City dental insurance plan following loss of alternate coverage will become effective the first of the month following payment of two dental premiums through the City's payroll process. Re-enrollment in the dental insurance plan is not retroactive.

[COMMENT: Section 20.5 is that same as Subsection 11.3.6 of the current MOU between the City and the Association of Engineers and Architects.]

~~An employee may choose, during open enrollment or within thirty days of a qualifying event, to drop health and/or dental coverage and receive a payment in-lieu. [COMMENT: Repeats what is already in Section 20.2.] To qualify, the employee must prove acceptable alternate group coverage and work 35+ hours/week. [COMMENT: Moved to Section 20.3.]~~

## **ARTICLE 21 FLEXIBLE SPENDING ACCOUNTS - MEDICAL/DEPENDENT CARE**

The City participates in Dependent Care Assistance and Medical Reimbursement Programs. Under these programs, employees may put aside up to \$5000 in pre-tax income to pay for eligible dependent care and may set aside up to \$2500 in pre-tax income for eligible medical care. The City shall continue to make this benefit available to Association members during the term of this Agreement.

## **ARTICLE 22 LIFE INSURANCE**

**22.1 Benefit:** The City shall pay the full premium for employee coverage equal to two (2) times the employee's annual salary. Additional employee coverage equal to two (2) times the employee's annual salary, up to \$750,000 of total coverage, is available at employee cost. Dependent coverage is also available at employee cost. Coverage

from \$2,000 up to \$10,000 for spouse and/or dependent children is available at employee cost.

**22.2 Part-Time Employees:** Part-time and temporary employees **are not eligible** for this benefit.

## **ARTICLE 23 OPTIONAL BENEFITS**

Optional benefits are available for employee, spouse/domestic partner<sup>5</sup> and children at employee expense. The City shall continue to make at least the following three optional benefits available to Association members during the term of this Agreement These optional benefits include but are not limited to:

- Vision Insurance
- Personal Accident Insurance
- Long Term Care Insurance

Please contact Human Resources for more information regarding optional benefits.

## **ARTICLE 24 LONG-TERM DISABILITY**

**24.1 Benefit:** During the term of this Agreement, the City will continue to offer eEmployees have the option to purchase long-term disability insurance which will subsidize their income in the event of a non-work related injury or illness. The City does not participate in the State Disability Insurance plan. Therefore, if an employee suffers a non-work related injury or illness and is unable to work, the employee would not receive any City compensation.

**24.2 Plans Offered:** The City shall continue to offers employees a choice of two long-term disability plans, one with a 30-day waiting period and another with a 60-day waiting period. Employees must use accrued leave balances to receive compensation during the waiting period when using the long-term disability benefit.

**24.3 Temporary Employees:** Temporary employees **are not eligible** to purchase long-term disability insurance.

## **ARTICLE 25 EMPLOYEE ASSISTANCE PROGRAM**

**25.1 Counseling Provided:** The City recognizes that professional counseling is an important benefit to assist employees in resolving personal and family issues which may otherwise affect the employee's job performance and well being. Through the Employee Assistance Program (EAP), licensed counselors are available to help employees resolve issues and identify strategies for coping with difficult situations.

<sup>5</sup> A domestic partner, as referenced in sections above, must be the domestic partner registered with the Human Resources Department.

**25.2 5 Sessions at No Cost:** The City will provide up to five (5) counseling sessions per incident per fiscal year at no cost to the employee.

**25.3 Part-Time Employees:** Part-time and temporary employees **are not eligible** for this benefit.

## **ARTICLE 26 SUBSTANCE ABUSE PROGRAM**

**26.1 Policy:** It is the policy of the City to maintain a safe, healthful and productive work environment for all employees. The City will act to eliminate any substance abuse which increases the potential for accidents, absenteeism, substandard performance, poor employee morale or tends to undermine public confidence in the City's workforce.

**26.2 Prohibition:** The Substance Abuse Policy prohibits employees from reporting to work under the influence of alcohol or drugs, exhibiting symptoms of alcohol or drug use, using, possessing, selling or providing drugs or alcohol while on duty, and employees shall not have the ability to work or be on paid standby when impaired as a result of the use of alcohol or drugs. Additionally, employees are required to notify their supervisor when any medication or drug they are taking could create an unsafe and dangerous situation. Employees may be requested to submit to a drug and/or alcohol analysis when there is reasonable suspicion that an employee is intoxicated or under the influence of drugs or alcohol.

**26.3 Benefit:** In accordance with the Substance Abuse Policy, the City offers self-referral and rehabilitation/treatment options for employees that may be experiencing a problem with alcohol and/or drug use. The City pays 70% of a first occurrence rehabilitation program and the employee pays 30% as approved by the Employee Assistance Program (EAP).

**26.4 Reference:** Please refer to Council Policy Manual Section 1.4.2 for the complete Substance Abuse Policy.

**26.5 Part-Time Employees:** The Substance Abuse Policy applies to all employees; however, part-time and temporary employees **are not eligible** for the Employee Assistance Program benefit set forth in Section 26.3.

## **ARTICLE 27 HOLIDAYS<sup>6</sup> [Comment: What does this footnote refer to?]**

Each calendar year Full-time employees shall receive at least fourteen (14) paid holidays, which include:

<sup>6</sup> Reimbursement/contribution is prorated for part-time employees based on hours scheduled:

- 30 – 39 hours = 75%
- 25 – 29 hours = 62.5%
- 20 – 24 hours = 50%
- Less than 20 hours = none

New Years Day  
Martin Luther King Day  
Presidents' Day  
Cesar Chavez Day  
Memorial Day  
Independence Day  
Labor Day

Columbus Day  
Veterans Day  
Thanksgiving Day  
Day After Thanksgiving  
Christmas Eve Day  
Christmas Day  
New Years Eve Day

## **ARTICLE 28 VACATION**

**28.1 Accrual Rate:** Vacation accrues at the following rates for each paid hour (either worked or paid absence):

<b>Years of Service</b>	<b>Annual Hourly Accrual (Full Time)</b>
1 – 5	120 hours
6 – 14	160 hours
15+	200 hours

**28.2 Accrual Rate Limits:** There is no limitation on the amount of vacation that can be accrued. ~~Employees may only accrue vacation up to a maximum of two (2) times their annual accrual rate. Once an employee reaches their maximum accrued vacation limit, the employee will not accrue vacation until their vacation balance falls below the maximum limit.~~

<b>Years of Service</b>	<b>Maximum Accrued Vacation</b>
<del>1 – 5</del>	<del>240 hours</del>
<del>6 – 14</del>	<del>320 hours</del>
<del>15+</del>	<del>400 hours</del>

## **ARTICLE 29 VACATION SELLBACK**

~~ALP represented employees are eligible to sell back one hundred twenty (120) hours of accrued vacation per payroll calendar year.~~

**29.1 Calendar Year 2012:** ~~Effective December 25, 2011,~~ Employees may elect to sell back up to a maximum of sixty (60) hours of vacation accrued in calendar year 2012 and in accordance with the guidelines set below.

~~The City shall administer the vacation sellback program as described in the six (6) bullet points listed below:~~

- ~~8.~~ ALP represented ~~An~~ employees must elect the number of vacation hours the employee ~~they~~ will sell back during calendar year 2012, up to the maximum of sixty (60) hours, by November 26, 2011.

9. The election to sell back vacation hours in calendar year 2012 is **irrevocable**. This means that ~~ALP represented the employees~~ must sell back the elected number of accrued vacation hours during calendar year 2012.
10. ~~An LP represented employees who does not~~ make an election or who does not submit an irrevocable election form to Payroll on or before November 26, 2011, ~~is will not be eligible~~ to sell back any vacation hours in calendar year 2012.
11. ~~An LP represented employees~~ can elect to sell back only vacation hours accrued during 2012, and any vacation hours accrued and carried over prior to calendar year 2012 are not eligible for sell back in calendar year 2012.
12. Any vacation hours accrued in calendar year 2012 by ~~an LP represented~~ employees will not be available for use until the employee's accrued vacation hours in calendar year 2012 equal the number of hours the employee has elected to sell back in calendar year 2012. Then, only those vacation hours accrued in calendar year 2012 over the number of hours ~~the an LP represented employee~~ elected to sell back in 2012 will be available for use by the employee. This means that hours elected for sell back may only be used for sell back purposes and cannot be used for vacation time off purposes.
13. ~~ALP represented employees~~ An employee may still use any vacation hours accrued and carried over prior to 2012, subject to the normal rules of requesting use of vacation. Any vacation hours accrued and carried over prior to 2012 are not eligible for sell back.

**29.2 Elimination:** Effective [DATE] December 23, 2012 (the first pay period of payroll calendar year 2013), the Vacation Sellback program will be eliminated and no employee will be eligible to sellback any accrued vacation hours.

### **30. EXECUTIVE LEAVE<sup>7</sup> [What does the footnote refer to?]**

**30.1 Basic Executive Leave:** Executive leave is a benefit awarded as hours/days off in the amount , up to a maximum of forty (40) hours/ five (5) days during a payroll calendar year. Association members are entitled to forty (40) hours/5 days of executive leave each calendar year. Executive Leave is not an accrued benefit and unused leave does not carry over from year to year. [COMMENT: Deleted sentence moved to Section 3.4. Doing so clarifies that it applies to all executive leave.]

**30.2 Additional Executive Leave:** In addition to the executive leave in Section 30.1, the City Attorney has the discretion to award an Association member up to forty (40) hours additional executive leave in recognition of commendable or outstanding performance

<sup>7</sup> Reimbursement/contribution is prorated for part-time employees based on hours scheduled:

- 30 – 39 hours = 75%
- 25 – 29 hours = 62.5%
- 20 – 24 hours = 50%
- Less than 20 hours = none

as part of the Annual Evaluation. The Management Performance Program (MPP) provides that employees may receive up to forty (40) hours of additional executive leave. [COMMENT: As discussed above in Article 12, the MMP does not really work with attorneys. The attorneys are proposing their own performance program.]

**30.3 Proration:** When an employee is hired into a position eligible for executive leave, the leave may be prorated during the first year dependent upon the hire date.

**30.4 No Accrual:** Executive leave is not an accrued benefit and unused leave does not carry over from year-to-year.

**30.5 Administration:** The City Attorney will administer executive leave Please refer to Council Policy Manual section 4.2.4 and 3.3.2 for complete policy guidelines.

[COMMENT: CPM section 3.3.2 is MMP.]

## **ARTICLE 31 ABSENCES OF LESS THAN 8 HOURS**

The City Attorney will administer absences of less than 8 hours during the regular shift of an Association member in accordance with City Policy Manual Section 4.2.4, as in effect July 1, 2012.

## **ARTICLE 32 SICK LEAVE**

**32.1 Accrual Rate:** Each employee shall be entitled to sick leave with pay accruing Paid sick leave accrues at a rate of .04616 for each paid hour (either worked or paid absence). For a full-time employee, this equals approximately one (1) day per month.

**33.2 Use:** Sick leave can be used for any of the following reasons:

- A non-job related illness or injury of the employee, including absences of female employees related to pregnancy or childbirth;
- Accrued sick leave may be used f[or the care related to the illness or injury of a child for which the employee is legally responsible, or of the employee's child, mother, father, spouse, or domestic partner\*\*<sup>8</sup>.

[COMMENT: Change to above bullet point is consistent with Subsection 8.3.2 of the current MOU between the City and the Association of Engineers and Architects.

- Up to a total of forty-eight (48) hours of accrued sick leave per calendar year may be utilized if the employee is required to be absent for the care related to the illness or injury of the employee's grandchild, brother, sister, father-in-law, mother-in-law, step-father, step-mother, or step-child;

<sup>8</sup> A domestic partner, as referenced in sections above, must be the domestic partner registered with the Human Resources Department.

- Medical or dental appointments of the employee or of any of the following persons who need assistance: a child for which the employee is legally responsible, or the employee's, mother, father, spouse, or domestic partner\*\*<sup>9</sup>.

[COMMENT: The first part of the above bullet point makes express that an employee can use sick leave for medical and dental appointments. This is consistent with Subsection 8.3.2 of the current MOU between the City and the Association of Engineers and Architects. The second part of the above bullet point allows sick leave to be used for these additional purposes.]

- For a job-related illness or injury in accordance with the provisions of Article 36, entitled "Disability Leave;"

[COMMENT: The addition of the above bullet clarifies another use for sick leave. It is consistent with the first sentence of Subsection 8.3.3 of the current MOU between the City and the Association of Engineers and Architects.]

- For a leave of absence in accordance with Council Policy Manual Section 4.2.1, entitled "Leaves of Absence," and Article 37 of this Agreement; and

[COMMENT: The addition of the above bullet clarifies another use for sick leave identified in the Leaves of Absence policy.]

- For a donation in accordance with the Catastrophic Illness Time Donation Program set forth in City Policy Manual Section 4.2.10.

[COMMENT: The above language is from Subsection 8.3.4 of the current MOU between the City and the Association of Engineers and Architects.]

**33.3 Substance Abuse Program:** If approved by the City, an employee who is enrolled and participating in a substance abuse treatment program may use sick leave for absences resulting from participation in such program. The City may require appropriate verification.

[COMMENT: Language in Section 33.3 is from Subsection 8.3.6 of the current MOU between the City and the Association of Engineers and Architects.]

## **ARTICLE 34 SICK LEAVE PAYOUT**

**34.1 Payout:** Members of the Federated Retirement System who retire with at least fifteen (15) years of service are eligible to receive, upon retirement, payout for a portion of their unused earned sick leave at the rate of:

**Accrued Sick Leave Hours**

**Sick Leave Payout**

<sup>9</sup> A domestic partner, as referenced in sections above, must be the domestic partner registered with the Human Resources Department.

0 – 399 Hours  
400 – 799 Hours  
800 – 1,200 Hours

50% of final hourly rate  
60% of final hourly rate  
75% of final hourly rate

**34.2 Additional Payout:** If employee's balance is greater than 1,200 hours, employee is also eligible for a payout of 75% of the value of sick leave in excess of 1,200 hours that is earned but unused during the two (2) years prior to retirement.

**34.3 New Hires:** Employees hired on or after [DATE] September 30, 2012, shall not be eligible for any sick leave payout.

**34.4 Part-Time Employees:** Part-time and temporary employees **are not eligible** for this benefit.

## **ARTICLE 35 MILITARY LEAVE**

Persons employed by the City engaging in active military duty for training or other purposes may be provided paid military leave for up to thirty (30) calendar days per fiscal year. In addition, under certain circumstances the City may provide Supplemental Salary and benefits for eligible employees. Please refer to Council Policy Manual Section 4.2.2 for additional information.

## **ARTICLE 36 DISABILITY LEAVE SUPPLEMENT**

**36.1 Benefit:** If required to be absent from work due to a work related illness or injury, employees may receive a disability leave supplement which, when added to the Workers' Compensation Temporary Disability, equals 85% of the employees' base salary.

**36.2 Benefit Elimination:** Effective June 24, 2012, the disability leave supplement is eliminated. Employees will be allowed to integrate accrued vacation and accrued sick leave and then accrued vacation once sick leave vacation has been exhausted.

[COMMENT: Sick leave can be used for employee related illness and injury. It is generally for non-job related illness and injury because worker's compensation covers job related illness and injury. If the City is going to stop providing disability leave supplement, it only seems reasonable that employees should be able to first use sick leave – which relates to absences due to employee illness and injury - and then vacation.]

Part-time and temporary employees are not eligible for this benefit. [COMMENT: No need to say that part-time employees aren't eligible for a benefit that does not exist!]

## **ARTICLE 37 LEAVES OF ABSENCE**

**37.1 General:** The City Attorney, as the Appointing Authority, may grant Association employees unpaid leaves of absence may be granted for up to twelve (12) months,

with possible extension of up to six (6) months, in accordance with Council Policy Manual Section 4.2.1 (as revised July 31, 2012).

**37.2 Use of Paid Sick Leave:** Before the use of any other paid leave, an Association employee has the right to use any accrued sick leave for the care of an immediate family member who has a serious health condition. (See, Council Policy Manual Section 4.2.1 (H.3).)

[COMMENT: Council Policy Manual Section 4.2.1 (H.3) states that the use of sick leave will be in accordance with the MOA. The above provision makes clear in this MOA that sick leave can be used.]

**37.3 Insurance Benefits:** (Employees on unpaid leave may continue their insurance benefits by paying full premiums.)

Please refer to CPM Section 4.2.1 for program details.

## **ARTICLE 38 BEREAVEMENT LEAVE**

**38.1 40 Hours of Leave:** Each full-time or benefited part-time employee shall be granted bereavement leave with full pay for up to forty (40) hours to attend to the customary obligations arising from the death of any of the following relatives of such employee or employee's spouse or employee's domestic partner<sup>7</sup>.

~~All leave must be used within fourteen (14) calendar days following the death of an eligible person. Under extreme circumstances, the fourteen (14) day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final with no process for further appeal. [COMMENT: Moved to below.]~~

- |   |                                |
|---|--------------------------------|
| ▪ Parent/Step parent                    | ▪ Grandparent/Step-grandparent |
| ▪ Spouse/Domestic partner <sup>10</sup> | ▪ Grandchild                   |
| ▪ Child/Step child                      | ▪ Great grandparent            |
| ▪ Brother/Sister                        | ▪ Son/daughter in-law          |
| ▪ Step Brother/Step Sister              | ▪ Brother/sister in-law        |
| ▪ Half Brother/Half Sister              | ▪ Step-great grandparents      |

[COMMENT: Addition included in Subsection 8.7 of the current MOU between the City and the Association of Engineers and Architects.]

**38.2 Timing of Use:** All leave must be used within fourteen (14) calendar days following the death of an eligible person. Under extreme circumstances, the fourteen (14) day requirement may be waived by the Director of Employee Relations. The decision of the Director of Employee Relations shall be final with no process for further appeal.

<sup>10</sup> A domestic partner, as referenced in sections above, must be the domestic partner registered with the Human Resources Department.

## **ARTICLE 39    TIME DONATION PROGRAMS**

Association employees are entitled to participate in the City's ~~The City has~~ Time Donation Programs, which allow employees to donate accrued vacation to fellow employees under special circumstances, in accordance with Council Policy Manual Section 4.2.10 (as revised June 7, 2007). An employee must meet the criteria established under the Time Donation Policy to receive time donations.

Please refer to CPM Section 4.2.10 for additional information.

## **ARTICLE 40    JURY SERVICE**

Each full-time employee, or each part-time employee who is eligible for benefits, who is required to take time off from duty to serve as a juror in any Court of this State, or of the United States of America, shall receive the regular compensation less all jury fees received, excluding mileage. Each employee receiving a notice to report for jury service shall immediately notify his/her immediate supervisor.

[COMMENT: Article 40 is that same as Subsection 8.8 of the current MOU between the City and the Association of Engineers and Architects.]

## **ARTICLE 41    WITNESS LEAVE:**

**41.1    Leave:** Each full-time employee of the City who is required, under subpoena, to take time off duty with the City, to appear as a witness, by reason of his/her employment with the City, in any case or proceeding in any Court of this State, or of the United States of America, shall receive his/her regular salary during the terms of his/her service as a witness under subpoena, less any and all witness fees which he/she may receive therefore. Compensation will not be paid if the employee is a party to the action and was not acting in the course and scope of his/her employment.

**41.2    Notice:** Upon service of a subpoena, an employee shall immediately advise his/her supervisor of the time when he/she is required to appear in Court.

[COMMENT: Article 41 is substantively the same as Subsection 8.9 of the current MOU between the City and the Association of Engineers and Architects with the exception of the highlighted language. An employee sued while in the course and scope of employment should receive the benefit whether or not he/she is a named party.]

## **ARTICLE 42    EMPLOYEE TRAVEL/MILEAGE**

Association members shall be entitled to payment and/or reimbursement for travel and mileage in accordance with Council Policy Manual Sections 1.8.2 (as revised March 16, 2009) and 1.8.3 (as revised July 21, 2011).

#### **ARTICLE 43     CONTRACTING OUT**

The City agrees to meet and confer with the Association before contracting out work currently performed by bargaining unit members whenever such contracting out would result in material reduction of work done by bargaining unit members or would have significant adverse impact on bargaining unit work. It is agreed that position reductions, which result in lay-off of employees in the bargaining unit constitute significant impact on bargaining unit work.

[COMMENT: Article 43 is the same as Subsection 20.1 of the current MOU between the City and the Association of Engineers and Architects]

#### **ARTICLE 44.     LAYOFF**

44.1    **Order of Layoffs:** When one (1) or more Association members are to be laid off for lack of work, purposes of economy, curtailment of positions or other reason, the order of layoff shall be as follows: Permanent employees in inverse order of seniority within the classification being reduced, or in a higher class.

44.2    **Transfers:** Permanent employees shall be given every opportunity for transfer to other departments or other positions within the Office of the City Attorney when layoff is pending.

44.3.    **Notice:** Employees subject to the provisions of this Article shall, whenever possible, be given at least thirty (30) calendar days notice in writing before the effective date of layoff. The Association shall receive concurrent notice, and upon written request within seven (7) calendar days after the notice is given shall be afforded an opportunity to meet with the appropriate City representatives to discuss the circumstances necessitating the layoff and any proposed alternatives to such layoff and impact to the bargaining unit.

Upon specific request by the Association, the City shall provide any available public, written documents relating to staffing levels in a the City Attorney's Office. If workload documentation is available, the City will provide it to the Association, upon written request.

[COMMENT: With the exception of the highlighted language, Article 44 is the same as Subsections 9.1 and 9.2 of the current MOU between the City and the Association of Engineers and Architects]

#### **ARTICLE 45.     TELECOMMUTING**

The City seeks to encourage the implementation of "green" policies, although in recent years it has eliminated employee benefits that encourage the use of mass transit and alternative methods of commuting. Telecommuting has many positive effects on the environment, and many of the services performed by Association members can be performed at alternate locations without lowering the level and standard of customer service. Accordingly, the City Attorney shall support, allow and encourage telecommuting of Association members who wish to do so to the maximum extent in accordance with City Policy Manual Section 1.7.2, entitled "Telecommuting Policy" (as revised July 16, 2004).

## **ARTICLE 46    EXHIBITS**

The following exhibits are attached to this Agreement:

Exhibit A – Association Classifications

Exhibit B – Side Letter between City and Association

Exhibit C – Agency Shop Agreement between City and Association

Exhibit D - Association Salary Ranges

### **Agency Shop Agreement addressed in Subsection 8.6 AGENCY SHOP**

~~1. The City of San Jose ("City") and the Association of Legal Professionals of San Jose ("ALP" or "Association") enter into this Agreement to implement an Agency Shop agreement pursuant to California Government Code section 3502.5 and other applicable rules or law, including Section 14 entitled "Payroll Deductions" of the City's Employer-Employee Relations Resolution No. 39367 which is incorporated as though set forth in its entirety herein.~~

#### **2. Definitions:**

~~a. "Agency Shop," as used in this Agreement, means "an arrangement that requires an employee, as a condition of employment, either to join the recognized employee organization or to pay the organization a service fee in an amount not to exceed the standard initiation fee, periodic dues and general assessments of the organization, as may be amended from time to time by the Association." The "service fee" may also be referred to as an "Agency Fee" or "Agency Shop Fee" under the applicable rules and law and in this Agreement.~~

~~b. "Agency Fee" collected from non-member bargaining unit employees pursuant to this Agreement shall be limited to ALP's annual costs for representing such employees. Such amount shall be those amounts for full-time and part-time employees as are certified to the City's Municipal Employee Relations Officer or designee, from time to time, by the designated officer of the Association as the Agency Fee.~~

~~—The Agency Fee does not include the amounts used for the Association's political activity or other categories of expenses deemed as non-chargeable to Association members by applicable law.~~

c. ~~"City-ALP Agreement" means either a tentative agreement or a memorandum of agreement negotiated and executed by the City and ALP governing the terms and conditions of employment of employees in classifications represented by ALP for a stated period of time, whichever is in effect.~~

3. ~~This Agreement will be placed in effect thirty (30) calendar days following execution by the Association and the City, and after notice of the Agency Fee has been provided to employees in classifications represented by the Association.~~

4. ~~Unless otherwise agreed, all applicable dues deductions, Agency Fee, or charitable contributions (if eligible), for the month shall be deducted by the City from wages earned by the employee while in a classification represented by ALP from the first two (2) bi-weekly pay periods each month. All deductions shall be in the bi-weekly amount certified to the City's Municipal Employee Relations Officer or designee, from time to time by the designated officer of the Association as the regular bi-weekly dues and Agency Fee.~~

a. Dues Deductions:

(1) ~~The City will deduct from the wages of each employee covered by this Agreement, while such employee is assigned to a classification represented by ALP, dues uniformly required as a condition of membership, pursuant to the Association's constitution and by laws provided that the employee has signed an appropriate dues deduction card (Exhibit A).~~

(2) ~~Within thirty (30) calendar days of execution of this Agreement (or within thirty (30) calendar days of hire for employees hired after the execution of this Agreement), covered employees will execute written authorization for either Association dues deductions, Agency Fee, or, if eligible, the charitable contribution. In the absence of written authorization, the employee will be deemed an Agency Fee payer and City will deduct the Agency Fee from the employee's paycheck pursuant to this Agreement~~

(3) ~~Once initiated, dues deductions shall continue until the authorization is revoked in writing by the employee. An employee may only revoke a dues authorization by delivering the written notice of revocation to the City's Municipal Employee Relations Officer or designee, with a copy to the Association. The written notice of revocation shall be delivered to the Municipal Employee Relations Officer or designee either in person at the Office of Employee Relations or by regular U.S. Mail, with a copy to the Association.~~

5. ~~All applicable dues deductions and/or Agency Fee withheld by the City will be transmitted by the City to the treasurer of the Association, or its other designated officer, at the address specified by the Association in writing and accompanied by a list of the employees for whom the deduction was made. The Association agrees that~~

such information and lists will be treated in a confidential manner. The deductions and the list will be remitted to the Association not later than twenty-one (21) calendar days following the pay period in which the deductions were made.

6. ~~Employee Rights:~~

a. ~~The parties recognize that employees in a classification represented by the Association have the right to join and/or participate, or, alternatively, the equal right to refuse to join and/or participate, in the Association or its lawful activities. Neither party shall discriminate against an employee in the exercise of these alternative rights.~~

b. ~~Pursuant to an Agency Shop agreement, as provided under State law and this section, employees must either voluntarily join the Association or must pay the Agency Fee; membership in the Association shall not be compulsory. An employee has the right to choose either to:~~

~~(1) Become a member of the Association; or~~

~~(2) To pay the Association a fee for representation services as described in Section 2(b) above of this Agreement. The amount of the Agency Fee will be a uniform amount established by the Association and limited as provided by law. The amount of the Agency Fee and any changes in the fee will be certified in writing to the City's Municipal Employee Relations Officer or designee by the President of the Association; or~~

~~(3) To refrain from either of the above courses of action upon the grounds set forth in Section 7 below of this Agreement.~~

7. ~~Employees Exempted from Obligation to Pay Association:~~

~~Any employee who is a member of a bona fide religion, body, or sect that has historically held conscientious objections to joining or financially supporting public employee organizations shall not be required to join or financially support any public employee organization as a condition of employment; however:~~

a. ~~The employee will be required, in lieu of periodic dues, initiation fees, or agency fees, to pay sums equal to dues, initiation fees, or agency fees to a non-religious and non-labor charitable fund exempt from taxation under Section 501 (c)(3) of the Internal Revenue Code, as follows:~~

~~(1) The employee may choose the organization from the following list of qualifying organizations designated by the City and Association:~~

~~(a) Legal Aid Society of Santa Clara County~~

~~(b) Any charity jointly agreed upon by the City and the Association, which charity cannot be affiliated in any manner with the Association or be related to an established religious organization.~~

~~(2) If the employee refuses to choose a qualified charity, the employee will be deemed to have selected the Legal Aid Society of Santa Clara County.~~

~~(3) Charitable contributions, if applicable, will be transmitted to the applicable charity by the Association.~~

~~b. Employees requesting an exemption from paying an agency fee pursuant to this Section must submit a request in writing and provide verification of such membership in a qualifying bona fide religion, body or sect to the City's Municipal Employee Relations Officer or designee. The Municipal Employee Relations Officer or designee shall provide notification to the Association of the determination within five (5) calendar days.~~

~~8. The Association will keep an adequate itemized record of its financial transactions and shall make available annually, upon request, to the City and to employees in classifications represented by the Association, within sixty (60) calendar days after the end of its fiscal year, a detailed financial report thereof in the form of a balance sheet and an operating statement, certified as to accuracy by its president and treasurer or corresponding principal officer, or a certified public accountant, as provided in Government Code section 3502.5(f).~~

~~9. Notice of Objection to Association Expenditures:~~

~~The Association shall provide an annual written notice to each employee in a classification represented by the Association who is required to pay the Agency Fee. The notice shall include:~~

- ~~a. The amount of the Association dues (if applicable) and the Agency Fee; and~~
- ~~b. The percentage of the Agency Fee amount that is attributable to chargeable expenditures and the basis for this calculation.~~

~~Any employee who is required to pay an Agency Fee may object to the payment of an Agency Fee amount that includes non-chargeable expenditures, and challenge the calculation of the non-chargeable expenditures. An Agency Fee objection must be filed with the Association within thirty (30) calendar days following distribution of the annual written notice.~~

~~10. The City and the Association may agree upon a process for the collection and remittance of voluntary dues deductions from represented employees that are in addition to those specified in this Agreement.~~

~~11. Rescission of Agency Shop Agreement / Agency Fee:~~

~~Pursuant to Government Code Section 3502.5, following implementation, this Agreement (including the Agency Shop) may be rescinded by a majority of all votes cast by the employees in the bargaining unit. Rescission will be subject to all of the following conditions:~~

- a. ~~A request for such a vote must be supported by a petition, filed with the City's Municipal Employee Relations Officer or designee, containing the signatures of at least thirty (30) percent of the employees in the bargaining unit;~~
- b. ~~The vote is by secret ballot; and~~
- c. ~~The vote may be taken at any time during the term of the effective City ALP Agreement, but, in no event, shall there be more than one (1) vote taken during such term.~~

12. ~~Indemnification, Defense, and Hold Harmless:~~

- a. ~~The Association shall indemnify, defend, and hold the City harmless against any and all suits, claims, demands and any other liabilities that may arise out of or by reason of any action that shall be taken or not taken by the City in connection with the City's interpretation, application, administration, or enforcement of any section in this Agreement pertaining to dues deductions and/or Agency Fee. The existence of or extent of any indemnification obligation under this Section shall be subject to the City's grievance procedure or, upon adoption of an agreed-upon grievance procedure in the effective City ALP Agreement, in accordance with such agreement's grievance procedure, if any.~~
- b. ~~If, through inadvertence or error, the City fails to make the authorized deduction, or any part thereof, the City shall assume no responsibility to correct such omission or error retroactively. It is expressly understood and agreed that the Association will refund to the employee any Association dues deductions and/or Agency Fee erroneously withheld from an employee's wages by the City and paid to the Association. In the event the Association fails to refund the dues deductions or Agency Fee erroneously withheld within a reasonable period of time following notification, the City will make such refund and deduct the amount from the amount due to the Association.~~

13. ~~The City and the Association have reached an agreement on the above terms in response to the Association's request for an agency fee agreement and majority support of employees represented by the Association at the City and Association monitored agency shop election on May 2, 2012. This Agreement shall not be effective unless and until executed by both parties. This Agreement shall be incorporated into the City ALP Agreement.~~